

REMARKS

The Examiner is thanked for the thoroughness of the Office action.

The Examiner also is thanked for withdrawing the prior rejections under 35 USC §§101 and 102.

Information Requests Under 37 CFR §1.105

The requests under 37 CFR §1.105 are noted. To address these requests, the undersigned notes as follows:

The “background description in the disclosure” has now been amended herein to describe the earlier version of the IEX TotalView® schedule bidding function.

The Leamon declaration of record refers to an article title “The Time Machine” by Joe Fleisher from Call Center Magazine. This article is dated April 5, 2002, and it identifies other workforce management software companies and their products during this timeframe. In addition to IEX, the assignee here, Aspect, Blue Pumpkin, Genesys and others were offering WFM software. While these products did enable agents to view schedules, indicate shift preferences and request schedule trades, on information and belief the specific schedule bidding functionality that is disclosed and claimed here was not included in those systems. The undersigned continues to investigate the details regarding these prior WFM products and will supplement this response if necessary with respect to any schedule bidding function that may have been included in such products.

There were no publications authored or co-authored by the applicant.

On information and belief, no third party publication was relied upon by the applicant to develop the disclosed subject matter.

An earlier version of the TotalView product did enable a schedule bidding function, as now described in the background portion of this disclosure. The specific improvements over the earlier version of the IEX TotalView schedule bidding function were set forth in Mr. Leamon’s declaration, which is of record. As Mr. Leamon pointed out previously, the TotalView software that first implemented the subject matter of this patent application was released as Version 3.5.1 in April 2003. In this early version of the TotalView schedule bidding feature, agents did not use their computers or web-based

interaction to perform the following subject matter, as recited in each independent claim of this application):

“during a given time period, enabling each of a set of entities, irrespective of their seniority or ranking in the work environment, to use the client computer to identify a given schedule pattern set and to identify a set of one or more bids with respect to one or more schedules that are associated with that given schedule pattern set;”

Moreover, in the prior system, the TotalView software did not (following the manual sign-up) then assign agents to candidate schedules associated with a given schedule pattern set, because that determination was made already when then agents themselves signed up for their schedules. Thus, the following subject matter of each independent claim also was absent in the earlier version of the schedule bidding feature:

“assigning the given set of the entities to one or more of candidate schedules that are associated with the given schedule pattern set.”

Rather, in the earlier version of the IEX TotalView schedule bidding feature, the system would create schedule patterns using average forecast staffing requirements over a selected time period. Created patterns were then “opened” to employees for bidding. This was not an automated process, and employees did not use their computers (or the Web) to bid on schedules. Rather, once the schedule patterns were finalized, a “common report” was printed by or otherwise made available by the system. This common report was just a report that contained a listing of all schedule patterns. Thereafter, each agent (in seniority or ranked order) elected which schedule he or she desired by writing in their name next to the desired schedule pattern. Thus, a higher seniority or ranked agent selected his or her schedule first, and only then could lower ranked agents make their selections. Agents did not work with the common report concurrently. After all the agents (in ranked order) made their respective selections, a scheduling analyst would enter each agent’s selection into the TotalView Workforce Management system. Once the agents were assigned to schedule patterns, the scheduling analyst would then create schedules for a given date range and agents would be assigned to the schedules they selected. This was a highly manual process and created several problems. Because each

agent had to sign up in seniority or rank order, it often took a long time to accomplish the process because, if a given agent had a day off (on the day that the process was being carried out), the sign-up had to be delayed until that agent returned to work. Because it took so much time to do the bidding in this prior method, especially for contact centers with a large number of agents, the contact center did not have the ability to change schedules more frequently to better match the forecasted work volume. Moreover, because each agent had to go to an office or conference room to review all available schedules and select the one he or she wanted, that process took them away from their primary function of answering calls.

Bidding from the agent's desk (from the "client computer") as described in the subject application allowed the agents (regardless of seniority or ranking) to review the schedules and bid on them when time permitted, e.g., between calls. Because agents entered their bids into the system, there was no need to have a scheduling analyst add that data, and the Release 3.5.1 version also contained automation to process the bids and assign the schedules to the agents without manual selection, as also recited in the claims.

The schedule bidding feature in TotalView Release 3.5.1 that is the "specific improvement of the claimed subject matter over the disclosed prior art" addressed the inefficiencies in the prior system by allowing each agent - regardless of seniority or ranking - to use his or her client computer to identify the schedule pattern set and to identify a set of one or more bids with respect to one or more schedules. Because agents no longer had to bid in seniority or rank order, this version allowed all agents to bid at the same time so that all bids could be done within a shorter time frame, as recited in the claims of the subject application.

The above is considered a complete response to the Rule 105 information requests, and the undersigned will supplement this response to the extent any additional relevant information is identified.

The Claim Objections

Claims 1-9 were objected to due to several identified informalities in the claim language due to the use of the "enabling" phrasing. The Examiner is thanked for identifying these issues. Claims 1-4 and 9 have been amended to remove the "enabling"

wording and to recite the associated elements in a more active manner. No new matter has been included.

Reconsideration is requested.

The obviousness rejection

Claims 1-9 are rejected under 35 USC §103(a). Respectfully, this rejection is traversed.

A determination regarding alleged obviousness under 35 USC §103(a) requires an analysis of the “scope and content” of the cited art.

Stannard discloses flight bidding system for airline personnel that enables users of the system (employees) to evaluate published bid line data. A “bid line” is a sequence of flights to various destinations, associated layovers, pay credit hours, flights times, airport arrival and departure times, and the like. The patent describes the known bidding process at the time: “[i]n the bidding process, the various flight personnel … submit bids for selected bid lines of their choice. The flight assignments are then made by the airline on a seniority basis...” (C1L7-25) Stannard’s invention was an improvement to that system that enabled individual subscribing employees to use a touch-tone telephone (or home PC) to identify his or her preferences with respect to several predefined bid selection criteria, and the order of importance, to that employee, of such criteria. Upon publication of the bid line selections, each of the bid lines was then subjected to “computer analysis” against each of the preferences and priorities for each subscribing employee. Thus, a bid line meeting a first priority selection of an employee was assigned a greater value than one meeting a lower priority. Each and every bid line was analyzed for each subscribing employee; for each such employee, the published bid lines were sorted and an output generated. The output was a “predetermined number of recommended bids, with the first such recommended bid representing a bid line incorporating the maximum preference selections of the employee adjusted in each case for the priority indicated by the subscriber.” (C1L60 – C2L22) The system thus analyzed each of the published bid lines against each subscriber’s selection criteria, and the technique derived “a schedule of proposed bid lines for bid line balloting” (claim 1 preamble).

O'Brien describes a system and method for online scheduling and shift management that assigns employees to shifts while accommodating factors including staffing requirements, employee preferences, and other settings based on forecasting. Figure 4 illustrates the basic process, which is a basic aspect of known workforce management systems. The patent is relied upon for its teaching of "utilizing a give[n] time period" for the scheduling bidding process described in Stannard.

Turning to the "differences" between the claimed invention and the cited references, the Examiner contends that Stannard taught all of the features of independent claims 1 and 9 except the "given time period" limitation described in O'Brien. With respect, this contention is incorrect.

The output of the Stannard process is not an assignment of actual employees to schedules. In particular, that process does not appear to be described in the reference itself; rather, the output of the Stannard process was merely a "predetermined number of recommended bids, with the first such recommended bid representing a bid line incorporating the maximum preference selections of the employee adjusted in each case for the priority indicated by the subscriber." (C1L60 – C2L22) As described above, the system analyzed each of the published bid lines against each subscriber's selection criteria, and the technique derived "a schedule of proposed bid lines for bid line balloting." The bid line balloting itself and the subsequent schedule assignment process was not explicitly described, and the Examiner's conclusion (that the reference does teach this subject matter) appears to be overstated. In this regard, the Examiner points to Stannard C1L1-25 and C11L24-41, but the former section is just a discussion of the "bidding process" and the latter section only adds that bidding can take place during "open times" between monthly bid solicitations. The claim language, however, is more specific: "using one or more processing devices to select a given set of the entities for scheduling with respect to the given schedule pattern set; and "assigning the given set of the entities to one or more of candidate schedules that are associated with the given schedule pattern set." There is no apparent "selection" in Stannard, nor does Stannard "assign[] the given set of the entities to one or more of candidate schedules that are associated with the given schedule pattern set."

“[E]very limitation positively recited in a claim must be given effect in order to determine what subject matter that claim defines.” *In re Wilder*, 429 F.2d 447, 450 (CCPA 1970); *See also In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970) (“[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.”).

Of course, one cannot show non-obviousness by attacking references individually where the rejection is based on a combination of the references; *In re Keller*, 642 F.2d 413, 416 (CCPA 1981). Applicants are not attacking the rejection on this basis. Rather, a test for obviousness is what the combined teachings of the references would have suggested to those of ordinary skill in the art, *Id.* at 426. Here, the “combined teachings” of Stannard and O’Brien describe a computer system that over a given time period (O’Brien) receives subscriber preference data, analyzes each of a set of published bid lines against each subscriber’s selection criteria and, in response, derives a schedule of proposed bid lines for subsequent bid line balloting (Stannard). The subject claims, in contrast, require the following:

Claim 1:

“... using one or more processing devices to select a given set of the entities for scheduling with respect to the given schedule pattern set; and

using one or more processing devices to assign the given set of the entities to one or more candidate schedules that are associated with the given schedule pattern set.”

Claim 9:

“code executable by the processor at the close of the given time period and responsive to selection of a given set of the entities for scheduling with respect to the given schedule pattern set for assigning the given set of the entities to one or more candidate schedules that are associated with the given schedule pattern set.”

Rejections based on §103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner may not “resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.” *In re Warner*, 379 F.2d 10100, 1017 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). Here, the Stannard/O’Brien art

does not appear to disclose or suggest the particular subject matter referenced above. Thus, each independent claim “as a whole” is not found in the combined teachings of the references, and the claimed subject matter satisfies the requirements of 35 USC §103(a).

Dependent claims 2-8 are patentable for the same reasons advanced with respect to claim 1 from which they depend.

New dependent claims 10-11 recite the additional subject matter of enabling a supervisor entity to manage the types of schedules that are made available for viewing and bidding as a function of the type of agents and their associated characteristics. This subject matter is disclosed, for example, at page 29, line 21, through page 30, line 4. It is neither disclosed nor suggested by Stannard or O’Brien. Thus, the Stannard/O’Brien combination is not the subject matter as a whole of claims 10-11. These claims should be found to be allowable for this additional reason.

Accordingly, a Notice of Allowance is requested.

Respectfully submitted,

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